Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MARCUS HAYES DC
PO BOX 198
BARKER TX 77413-0198

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name

HARRIS COUNTY

Carrier's Austin Representative Box

Box Number 21

MFDR Tracking Number

M4-11-2650-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "…MLN Matters Number MM750 is applicable to treatment for Medicare patients and not Texas Workers' Compensation patients and therefore, 59J is an invalid reason for denial…"

Amount in Dispute: $32.99

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "On January 3, 2011 Medicare implemented the multiple procedure payment reduction (MPPR) for selected therapy services. Please find attached to this correspondence, MLN Matters number MM7050 revised, which states for selected procedure codes full payment is made for the unit or procedure with the highest PE payment. For subsequent units and procedures full payment is made for work and malpractice and 80 percent for the PE services for treatment in a non-facility. The enclosed list indicates procedure code 97750 is subject to the multiple procedure payment reduction. The Medicare reduced therapy fee for this code is $28.49. This value multiplied by the approximate DWC mark up of 1.605 is $45.73. Therefore, the calculation is as follows: 97750-(one unit=100% of MAR) =$50.50; 97750-(7 units x $45.73) =$320.11. The prior total reimbursement of $370.61 is correct. The enclosed explanation of benefits indicated the reimbursement was based on a multiple procedure rule and the practice expense component for select therapy services were reduced by 20%. No additional allowance is due."

Response Submitted by: Thornton, Biechlin, Segrato, Reynolds & Guerra, LC; 912 S. Capital of Texas Highway; Suite 300; Austin TX 78746-5242

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 1, 2011	97750-FC	$32.99	$32.99

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.204 set out the fee guideline s for the reimbursement of workers' compensation specific codes, services and programs provided on or after March 1, 2008.
3. The service in dispute was reduced by the respondent with the following reason codes:

Explanation of benefits dated February 28, 2011
• 59J —Processed based on multiple or concurrent procedure rules, *practice expense component for select therapy services reduced by 20% for non-facility and 25% for facility.*

Explanation of benefits dated March 15, 2011
• 193 —Original payment decision is being maintained. Upon review, It was determined that this claim was processed properly.
• 59J —Processed based on multiple or concurrent procedure rules, *practice expense component for select therapy services reduced by 20% for non-facility and 25% for facility.*
Comments: Reconsideration 939935 Reference Medicare MLH Matters Number MM7050 Regarding Multiple Procedure Payment Reduction For Selected Therapy Services.

Explanation of benefits dated March 25, 2011
• 193E — Original payment decision is being maintained. Upon review, It was determined that this claim was processed properly. *Duplicate Appeal. An appeal of the original audit was previously performed for these services.*

Issues

1. Did the respondent support denial reason code '59J' and has the requestor received appropriate reimbursement for a Functional Capacity Evaluation (FCE)?
2. Is an FCE reimbursed like a therapy code? Is the requestor entitled to additional reimbursement?

Findings

1. The respondent reduced the payment of the disputed service based on denial reason '59J' - Processed based on multiple or concurrent procedure rules, *practice expense component for select therapy services reduced by 20% for non-facility and 25% for facility.* The respondent's position summary states "On January 3, 2011 Medicare implemented the multiple procedure payment reduction (MPPR) for selected therapy services. … The enclosed list indicates procedure code 97750 is subject to the multiple procedure payment reduction…" This denial reason is not supported because 28 Texas Administrative Code §134.204 (a) states that, "Applicability of this rule is as follows: (5) Specific provisions contained in the Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program…" The procedure code in dispute, 97750-FC falls into this exception. Therefore, this review will be in accordance to the applicable Division rules and fee guidelines.

   28 Texas Administrative Code §134.204 (g) states, "The following applies to Functional Capacity Evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT Code 97750 with modifier "FC." FCEs shall be reimbursed in accordance with §134.203(c) (1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required.
2. An FCE is billed and reimbursed in accordance with 28 Texas Administrative Code §134.203(c) (1); however, an FCE is a Division-specific code with a Division-specific modifier (97750-FC) defined as a comprehensive evaluation focusing on measuring the patient's functional abilities (potential for work). CPT code 97750 (physical performance tests/measurements) is classified as an 'always therapy' code used to evaluate the patient's performance of a specific activity/group of activities (to assess physical capabilities). Therefore, the FCE is not subject to the Medicare payment provision of a multiple procedure payment reduction for selected therapy services. Additional reimbursement is recommended as follows:

(DWC conversion factor of $54.54 divided by Medicare conversion factor of $33.9764 = $1.61) x participating amount of $31.46 = $50.50 x 8 units = $404.00 (MAR) minus respondent's previous payment of $370.61 = $33.39. The requestor is seeking $32.99; this amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is $32.99.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $32.99 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

		February 29, 2012
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.